STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
(Meter, P.J., and Fitzgerald and M.J. Kelly, JJ.)

Kenneth Admire,
Plaintiff/Appellee,

v.

Auto-Owners Insurance,
Defendant/Appellant.

Supreme Court Docket 142842

Court of Appeals Docket 289080

Ingham County Circuit 07-1752-NF
Hon. Thomas L. Brown

AMICUS CURIAE BRIEF OF COALITION PROTECTING AUTO NO-FAULT (CPAN) IN SUPPORT OF PLAINTIFF/APPELLEE/CROSS-APPELLANT

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Dated: February 21, 2012

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STATEMENT OF INTEREST OF *AMICUS CURIAE* CPAN

CPAN is a broad-based coalition formed to preserve the integrity of Michigan's model no-fault automobile insurance system. The "centerpiece" of the Michigan No-Fault Act is that it guarantees the payment of a broad scope of medical and rehabilitation expenses that enable accident victims, particularly those who have sustained catastrophic injury, to obtain the best recovery and the highest quality of life possible. These benefits are referred to as "allowable expense" benefits and are defined in Section 3107(1)(a) of the No-Fault Act. It is this feature of the Michigan No-Fault Act which distinguishes it from any other no-fault system in the United States. The central mission of CPAN is to protect and preserve the vitality of the Michigan auto no-fault insurance system so that it continues to provide comprehensive coverage and meaningful protections for Michigan citizens injured in motor vehicle collisions.

CPAN consists of fifteen major medical groups and six consumer organizations. CPAN's member organizations are identified below:

CPAN: Coalition Protecting Auto No-Fault	
Medical Provider Groups	**Consumer Organizations**
1. *Michigan State Medical Society*	1. *Brain Injury Association of Michigan*
2. *Michigan Osteopathic Association*	2. *Michigan Association for Justice*
3. *Michigan Health & Hospital Association*	3. *Michigan Citizens Action*
4. *Michigan Orthopaedic Society*	4. *Michigan Protection and Advocacy Services*
5. *Michigan Association of Chiropractors*	5. *Michigan Paralyzed Veterans of America*
6. *Americare Medical*	6. *Michigan State AFL-CIO*
7. *Michigan Association of Centers for Independent Living*	

8. *Eisenhower Center*	
9. *Michigan Academy of Physician Assistants*	
10. *Michigan Brain Injury Providers Council*	
11. *Michigan Dental Association*	
12. *Michigan Nurses Association*	
13. *Michigan Home Health Association*	
14. *Michigan Rehabilitation Association*	
15. *Spectrum Health*	

It is CPAN's fervent belief that Michigan's auto no-fault insurance system cannot survive unless the Michigan Legislature and the Michigan appellate courts preserve and protect the lifetime medical and rehabilitation benefits that have always been available to motor vehicle accident victims since the No-Fault Act went into effect in 1973. Ensuring the availability of handicapper transportation for persons injured in auto accidents touches the core of CPAN's mission.

INTRODUCTION

The central questions in this case are whether transportation expenses that are reasonably necessary for the care, recovery, or rehabilitation of an auto accident victim are compensable allowable expenses under MCL 500.3107(1)(a), and if so, do those transportation expenses include the full cost of a handicap-accessible van. The answer to both questions is a resounding"Yes." Handicap-accessible transportation is critical to the care, recovery, and rehabilitation of many catastrophically injured, wheelchair-bound auto accident victims. Michigan appellate courts have long recognized in Michigan no-fault jurisprudence that transportation is an integral part of a person's care, recovery, and/or rehabilitation, and are therefore encompassed within the products and services compensable under MCL 500.3107(1)(a).

Because transportation related to the auto accident injury is a part of the care, recovery and rehabilitation, Michigan appellate courts have consistently recognized that insurance companies must pay for the full cost of that handicap-accessible transportation. If insurance companies were permitted to only reimburse for the modifications to a handicap-accessible van but not the base cost of the van, many injured persons would be effectively denied this essential mode of transportation for their care, recovery, and rehabilitation for the simple reason that the cost of vans that can be fully modified for catastrophically injured persons are beyond the financial reach of many, if not most, of those persons suffering from catastrophic injuries. Ultimately, accepting the insurance industry's arguments in this case would mean that hundreds of paralyzed persons and wheelchair-bound auto accident victims who cannot use standard motor vehicle

transportation will be deprived of critical transportation to and from medical care and rehabilitation.

STATEMENT OF RELEVANT FACTS AND PROCEEDINGS

Kenneth Admire was catastrophically injured in a motor vehicle accident, from which he suffers a traumatic brain injury resulting in right hemiparesis. As a result, Kenneth Admire cannot walk and cannot move his extremities, except for limited use of his arms. He is also unable to verbally communicate, and instead uses a drawing board to write words and numbers instead of speaking. He is completely dependent upon a wheelchair for mobility, and due to his injuries, he requires a handicap-accessible van that permits him to roll his wheelchair into the van while he is sitting in the wheelchair. Because he cannot use his legs, he also requires a vehicle that has hand controls for acceleration and braking. Kenneth Admire uses his specially modified handicap-accessible van to get to medical appointments and to attend vocational rehabilitation at Peckham Vocational Center five days each week. Thus, the facts of this record demonstrate that Kenneth Admire requires a handicap-accessible van for his care, recovery, and rehabilitation. Indeed, Auto-Owners has admitted as much in its response to Plaintiff's Request for Admissions.

The trial court ruled that Defendant Auto-Owners was obligated to pay the full cost of Kenneth Admire's handicap-accessible transportation. The Court of Appeals affirmed the trial court's decision, relying on the published decisions of *Davis v Citizens Insurance Company*, *Griffith v State Farm*, and *Begin v Michigan Bell Telephone*, which held that the full cost of a modified van was an allowable expense. *Admire v Auto-Owners*, unpublished per curiam opinion of Court of Appeals, issued February 15, 2011, p. 4 (Docket No

289080). The Court of Appeals in *Begin* specifically reconciled this Court's decision in *Griffith v State Farm* with the Court of Appeals' earlier decision in *Davis*, by holding that when the product (such as a van) "is so blended with another product" (such as equipment making the vehicle handicap-accessible) "that the whole cost is an allowable expense if it satisfies the statutory criteria" for causation under the No-Fault Act and for reasonable necessity under Section 3107(1)(a). *Begin, supra* at 593. According to these precedents, the Court of Appeals held that the evidence clearly established that Kenneth Admire "could not drive a standard vehicle and needed a modified van for his transportation needs." *Admire, supra* at 5.

Auto-Owners appealed and this Court ordered oral argument on the application. (09/23/11 Order). In that order, this Court asked the parties to address "whether, or to what extent, the defendant is obligated to pay the plaintiff personal protection insurance benefits under the no-fault act, MCL 500.3101 et seq., for handicap-accessible transportation." (09/23/11 Order).

ARGUMENT

I. Transportation that is reasonably necessary for the injured person's care, recovery, and rehabilitation is an allowable expense under MCL 500.3107(1)(a).

The No-Fault Act lays out a broad test for the recovery of personal protection insurance (PIP) benefits. Section 3107(1)(a) of the No-Fault Act requires the insurer to pay PIP benefits for "allowable expenses" as follows:

> (1) Except as provided in subsection (2), personal protection benefits are payable for the following:
>
> > (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation.

MCL 500.3107(1)(a).

Michigan courts have long accepted that transportation costs qualify as an allowable expense under MCL 500.3107(1)(a). As discussed below, these courts have recognized that transportation is a product or service that is reasonably necessary for the care, recovery, and rehabilitation of an auto accident victim. Because handicap-accessible transportation is an integral part of the injured person's ability to attend medical appointments and rehabilitation, the handicap-accessible transportation is part of the injured person's "care" and "rehabilitation." Accordingly, transportation can qualify as an allowable expense benefit under Section 3107(1)(a).

This is a common sense proposition that the courts and Attorney General have reached because getting to the treatment or rehabilitation is part of the treatment. This conclusion was enunciated by the Attorney General in a 1981 opinion when it determined that transportation is recoverable under Section 3107(1)(a) because transportation is

necessary for an injured person to access medical treatment. 1981-82 Atty Gen 399 (1981). The Attorney General stated:

> [A]n injured person entitled to reasonable charges for reasonably necessary medical care, consisting of products, services and accommodations, would also be entitled to the reasonable charges for the cost of transportation to obtain the medical care. . . **transportation expenses are an integral part of receiving medical services** and are, therefore, encompassed within statutory provisions covering expenses for medical services.

Atty Gen Opn, at 7 (emphasis added). Thus, the Attorney General concluded that MCL 500.3107 encompasses "[r]easonable out-of-pocket expenses associated with the travel for medical purposes." 1981-82 Atty Gen 399 (1981).

Shortly after this Attorney General opinion, the Court of Appeals in *Swantek v Auto Club of Mich Ins Group*, 118 Mich App 807, 808; 325 NW2d 588 (1982), likewise held that transportation is recoverable under Section 3107(1)(a). In that case, the trial court granted summary disposition for the defendant on the grounds that the no-fault insurer did not have to pay plaintiff's transportation expenses even though those expenses were reasonably required for the injured person to obtain medical treatment. The Court of Appeals disagreed and reversed the trial court's decision. The Court of Appeals recognized that transportation to and from medical appointments was essential for the injured person's care, and thus, held that the insurer is equally obligated to pay for the transportation to and from the medical care, as it is for the medical care itself. In reaching this logical conclusion, the *Swantek* Court stated:

> We will not assume that the Legislature intended that persons injured in motor vehicle accidents pay their own reasonable transportation expenses when those expenses are incurred in an effort to obtain medical treatment. We conclude that the Legislature did not exclude reasonable and necessary travel

> expenses from the ambit of MCL 500.3107(a); MSA 24.13107(a).

Swantek, supra at 809-810.

A decade after the Attorney General opinion and the *Swantek* decision, the Court of Appeals reaffirmed these principles in *Davis v Citizens Insurance Co of America*, 195 Mich App 323; 489 NW2d 214 (1992). The *Davis* Court held that a catastrophically injured auto accident victim could recover the cost of acquiring a modified van for his use where the cost is reasonable and the van is reasonably necessary to enable the injured person to receive continued medical treatment. As the result of an auto accident, the injured person in *Davis* was paraplegic and confined to a wheelchair. The no-fault insurer refused to pay for the full cost of the plaintiff's handicap-accessible van, claiming instead that it was only responsible to pay for the cost of the modifications. The trial court held that the purchase price of the van was a reasonably necessary expense under the allowable expense provision of Section 3107(1)(a), reasoning that the van was necessary in order for the plaintiff to lead as full and complete a life as possible given her physical limitations. *Id* at 325. The trial court further rejected the insurer's argument that the county provided ambulance service and public transportation were available and thereby made plaintiff's requested van unnecessary.

In affirming the trial court, the Court of Appeals in *Davis* held that the full cost of the van was a reasonable expense and that the van was reasonably necessary. Even though transportation is as necessary for an injured person as it is for an uninjured person, the Court of Appeals noted that a handicap-accessible van is different from ordinary motor vehicle transportation and is a necessary product for a person confined to a wheelchair, especially given the limited availability of alternate means of public transportation.

Moreover, the handicap-accessible van allowed the plaintiff the ability to travel for medical purposes and provided her with the requisite independence to go to and from work. In this regard, the Court of Appeals held:

> In this case, the cost of the van was reasonable, and obviously the expense was incurred. We also find that the van was reasonably necessary. Transportation is as necessary for an uninjured person as for an injured person. However, the modified van is necessary in this case given the limited availability of alternative means of transportation. The ambulance service is limited to Branch County, traveling outside the county two or three times a week. Although this service is available twenty-four hours a day, seven days a week, advance notice is preferred for clients who, like plaintiff, reside more than five miles from town. Moreover, because the ambulance service is the only one in the county, transportation could be delayed or unavailable because of medical emergencies. The local transit authority provides door-to-door service to clients who make advance reservations, but it is unavailable during evenings. The van allows plaintiff to travel outside the county for medical purposes and vacations. In addition, the van was reasonably necessary according to plaintiff's treating physician. He testified that when he discharged plaintiff, one of the requirements was that plaintiff use a van for her transportation, allowing her the independence to go to work. Under these circumstances, we find that the modified van is an allowable expense.

Id at 327-328. Thus, under *Davis,* not only is transportation an allowable expense, but specifically the full cost of a handicap-accessible van is an allowable expense as it enables the injured person to access medical care and rehabilitation.

Most recently, in *Begin v Michigan Bell Telephone Co*, 284 Mich App 581; 773 NW2d 271 (2009), the Court of Appeals held that the insurer was responsible for payment of a modified van because the injuries arose out of an auto accident and the plaintiff presented evidence to support his claim that a modified van was a reasonable charge and a reasonably necessary product, service, or accommodation for his care under Section

3107. The Court of Appeals' decision and reasoning in *Begin* will be discussed more fully below in Section II.

The reasoning and application of these tenets recognized in *Swantek*, *Davis*, and *Begin* is no different in the instant case. Kenneth Admire has reasonable and reasonably necessary travel expenses associated with his rehabilitative work program at Peckham. He also uses his handicap-accessible van to attend his medical appointments. Furthermore, having his own handicap-accessible van allows him some degree of independence, such that he can visit his friends and family, which in and of itself is medically rehabilitative for this catastrophically injured auto accident victim. Accordingly, expenses associated with necessary transportation – such as purchasing a handicap-accessible van – can be reimbursed as an allowable expense benefit under Section 3107(1)(a) if the injured person has transportation costs, such as those incurred for a handicap-accessible van, in order to meet the injured person's special transportation needs, which are reasonably necessary for the injured person's care, recovery, and rehabilitation.

II. Once an injured auto accident victim demonstrates that his transportation needs under Section 3107(1)(a) consist of a handicap-accessible van, insurance companies must pay the full cost of the handicap-accessible van, which is a conclusion totally consistent with the decisions in *Griffith v State Farm* and *Begin v Michigan Bell Telephone Company*.

As discussed above, It is clear that under Section 3107(1)(a) transportation, including handicap-accessible vans, can be compensable as an allowable expense. Once the injured person establishes that the handicap-accessible van is reasonably necessary for his care, recovery, and rehabilitation, the insurer is then obligated to reimburse him for

the full cost of that handicap-accessible van. Auto-Owners, however, argues that it is only required to pay for the modifications to the van. However, the case law clearly establishes that, where a person has sustained catastrophic injury that substantially affects his transportation needs, and a handicap-accessible van can be demonstrated to be reasonably necessary for the injured person's care, recovery, and rehabilitation, then the entire cost of the handicap-accessible vehicle is compensable.

If an auto accident victim is paralyzed or depends on a wheelchair, then that person cannot use a standard motor vehicle. If this Court were to hold that insurance companies only have to pay for the adaptive equipment, then catastrophically injured persons will be effectively denied access to transportation. Persons who require handicap-accessible transportation often require a vehicle that is large enough to accommodate a wheelchair, like Kenneth Admire in this case who must ride his wheelchair into the vehicle and requires hand controls to drive the vehicle. Many times the injured person needs a van with a reinforced chasse to mount a heavy wheelchair lift. Vans that are large enough to undergo many of the modifications required for use by catastrophically injured auto accident victims are also more expensive than regular size vehicles. The cost of a full-size conversion van before modifications is, not surprisingly, beyond the financial capabilities of many injured persons who require a handicap-accessible van.

If the transportation needs of a person are such that they can only be addressed with a handicap-accessible van, it is essential that insurance companies pay the entire cost (the van plus the modifications equipment) because, to hold otherwise, is to effectively deny the injured person transportation. Indeed, many injured persons would be unable to afford the van if the insurer was only required to reimburse for the cost of the modifications.

It is essential to injured persons who require a handicap-accessible van for their care, recovery, and rehabilitation, that this Court hold that insurance companies are required to reimburse the full cost of that handicap-accessible transportation.

Indeed, reimbursing an injured person who satisfies the requirements of Section 3107(1)(a) for the full cost of a handicap-accessible van will save insurance companies money.

If an injured person is unable to travel in a standard vehicle and does not own a handicap-accessible van, then insurance companies will have to reimburse the injured person for handicap vehicle rental services or handicap taxi cab services. Over the life of the injured person, utilizing the specialized services of a rental company with handicap-accessible vehicles is much more expensive than if insurance companies were to periodically purchase a handicap-accessible van. Similarly, using Amb-U-Cab or some other handicap-accessible taxi cab service for daily needs over a long period would be cost prohibitive. It is far more cost efficient for insurance companies to purchase a handicap-accessible van for someone like Kenneth Admire who attends rehabilitation five days per week, not to mention medical appointments and otherwise accessing his care, recovery, and rehabilitation.

By recognizing, as the appellate courts have done for so many years, that handicap-accessible transportation is reasonably necessary for the injured person's care, recovery, and rehabilitation, this Court cannot and should not adopt Auto-Owner's argument that it is only obligated to pay for the modifications to the van. Once it is established in the trial court that an injured person requires handicap-accessible transportation for his care, recovery, or rehabilitation, then insurance companies are liable to pay the full cost for the

van and its modifications. Auto-Owners position would create the untenable situation where injured persons are effectively denied a handicap-accessible van even though they can establish that it is required for their care, recovery, and rehabilitation, as Kenneth Admire has demonstrated in this case.

This argument is supported by this Court's analytical approach in *Griffith v State Farm*, 472 Mich 521; 697 NW2d 895 (2005), and the Court of Appeals' decision in *Begin v Michigan Bell Telephone Co*, 284 Mich App 581, 594-596; 773 NW2d 271 (2009). The question in *Griffith* was whether the insurer was obligated to reimburse an injured person for his daily food consumption, even though his food needs had been totally unaffected by the accident. In reversing the Court of Appeals, this Court rendered a holding in *Griffith* that was narrow and limited. Simply stated, this Court held that the cost of non-medical, non-special dietary food unrelated to a motor vehicle injury and consumed by person who is cared for at home is not a recoverable allowable expense benefit under Section 3107(1)(a). In holding that the no-fault insurer was not responsible for paying the cost of Mr. Griffith's food expenses while he was cared for at home, this Court strongly emphasized that Mr. Griffith had dietary needs after his injury that differed in no way from his dietary needs before his injury, stating:

> Plaintiff does not claim that her husband's diet is different from that of an uninjured person, that his food expenses are part of his treatment plan, or that these costs are related in any way to his injuries. She claims instead that Griffith's insurer is liable for ordinary, everyday food expenses. As such, plaintiff has not established that these expenses are "for accidental bodily injury. . .
>
> . . . .
>
> Griffith's food costs here are not related to his 'care, recovery, or rehabilitation.' There has been no evidence introduced that

> he now requires different food than he did before sustaining his injuries as part of his treatment plan. While such expenses are no doubt necessary for his *survival*, they are not necessary for his recovery or rehabilitation from the injuries suffered in the accident, nor are they necessary for his care because of the injuries he sustained in the accident. Unlike prescription medications or nursing care, the food that Griffith consumes is simply an ordinary means of sustenance rather than a treatment for his 'care, recovery, or rehabilitation.' In fact, if Griffith had never sustained, or were to fully recover from, his injuries, his dietary needs would be no different than they are now. We conclude, therefore, that his food costs are completely unrelated to his 'care, recovery, or rehabilitation' and are not 'allowable expenses' under MCL 500.3107(1)(a).

Griffith, supra at 531-533, 535-536 (emphasis in original).

In reaching its conclusion that non-special dietary food served to an injured person who is cared for at home is not compensable under the No-Fault Act, this Court drew an important distinction between the *Griffith* scenario and the case where non-special dietary food is served to an injured person in an institutional setting. In doing so, this Court held that food provided to an injured person in an institutional setting is indeed compensable even though the injured person's food needs were not affected by the injury. In holding that the no-fault insurer would be liable for the full cost of an institutionalized patient's non-accident related food consumption, this Court in *Griffith* stated:

> The parties focus on the distinction between food costs for hospital food and food costs for an insured receiving at-home care. Plaintiff contends that there is no distinction between such costs. We disagree.
>
> Food costs in an institutional setting are "benefits for accidental bodily injury" and are "reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." That is, it is "reasonably necessary" for an insured to consume hospital food during in-patient treatment given the limited dining options available. Although an injured person would need to consume food regardless of his injuries, he would not need to eat *that*

> *particular food* or bear the cost associated with it. Thus, hospital food is analogous to a type of special diet or select diet necessary for an injured person's recovery. Because an insured in an institutional setting is required to eat "hospital food," such food costs are necessary for an insured's "care, recovery, or rehabilitation" while in such a setting. Once an injured person leaves the institutional setting, however, he may resume eating a normal diet just as he would have had he not suffered any injury and is no longer required to bear the costs of hospital food, which are part of the unqualified unit cost of hospital treatment.
>
> This reasoning can be taken a step further when considering the costs of items such as an injured person's clothing, toiletries, and even housing costs. Under plaintiff's reasoning, because a hospital provided Griffith with clothing while he was institutionalized, defendant should continue to pay for Griffith's clothing after he is released. The same can be said of Griffith's toiletry necessities and housing costs. While Griffith was institutionalized, defendant paid his housing costs. **Should defendant therefore be obligated to pay Griffith's housing payment now that he has been released when Griffith's housing needs have not been affected by his injuries?**

Griffith, supra at 537-539 (footnotes omitted) (italicized emphasis in original; bolded emphasis added).

This Court's discussion about the compensability of food in a home care setting versus institutionalized setting contains a significant rhetorical question: **"Should defendant therefore be obligated to pay Griffith's housing payment now that he has been released when Griffith's housing needs have not been affected by his injuries?"** *Griffith, supra* at 539. The essence of this rhetorical question suggests a threshold analysis that would look to whether the claimant's accident related injuries *affected* the claimant's pre-accident needs. In other words, if a catastrophic injury affected a claimant's needs, such that the claimant's housing needs are now different than they

were before the accident, then a sufficient causal nexus relationship has been established obligating the no-fault insurer to pay benefits for all those existing but now changed needs.

The rhetorical question posed in *Griffith* implicitly describes the causation standard that should be utilized, which simply stated is this:

> ***If the auto accident injury has affected any specific pre-accident needs of the injured person so that those needs are now different than they were before the accident, the no-fault insurer is obligated to pay the full amount of all charges associated with those needs, provided those charges are reasonable in amount and are reasonably necessary for the injured person's care, recovery or rehabilitation.***

In addition to the rhetorical question, the *Griffith* decision also includes an important hypothetical example regarding special shoes and prosthetics. In discussing the meaning of the terms "care," "recovery," and "rehabilitation," this Court observed that those terms must necessarily apply to the injuries caused by the auto accident. The Court then provided an example of care, recovery and rehabilitation related to an orthopedic injury. Importantly, in its examples, this Court states that the cost of "special shoes" would be compensable so long as the special shoes were necessitated by the auto accident, and further, this Court does not state that insurance companies can reduce the cost of those "special shoes" by the cost of the injured person's pre-accident shoes. In that regard, this Court stated:

> For instance, the cost associated with setting a broken leg would be compensable under the term "recovery" because it is necessary to return a person to his post-injury health, and the cost of learning to walk on a prosthetic leg would be recoverable under the term "rehabilitation" because it is necessary to bring the person back to a condition of productive activity. Similarly, the cost of such items as a prosthetic leg or special shoes would be recoverable under the term "care," even though the person will never recover or be rehabilitated

from the injuries, **because the cost associated with such products or accommodations stems from the injury.**

Griffith, supra at 535, n 12 (emphasis added).

In the hypothetical, this Court in *Griffith* recognized that, even though the amputee wore shoes before the accident, he now requires special shoes that fit on a prosthetic device and provide different support to accommodate the prosthetic. The amputee's need for shoes has dramatically and fundamentally changed after the auto accident. The need for the special shoes stems from the injury, and so, as this Court intimated in footnote 12, the cost of those special shoes are a recoverable allowable expense under Section 3107(1)(a).

The handicap-accessible van in this case is completely analogous to the special shoes attached to the bottom of a prosthetic leg. Clearly when a paralyzed person requires a handicap-accessible van, the cost of the van itself *stems from the injury*. The injured person would not have required a full-size conversion van that was large enough to accommodate a wheelchair, and heavy enough to carry a heavy lift, but for the injuries sustained in the auto accident. Kenneth Admire's need for a handicap-accessible van is directly and causally related to his auto accident injuries. Although he needed transportation prior to the accident, his transportation needs have dramatically and fundamentally changed after the accident. In fact, whatever vehicle he had prior to the accident is completely useless to him now. Kenneth Admire's need for a van that can be modified to accommodate his catastrophic injuries stem from the injury itself, such that the full cost of the van is compensable under MCL 500.3107(1)(a).

The Court of Appeals applied the logic of *Griffith* specifically to the situation of a handicap-accessible van. The Court of Appeals in *Begin v Michigan Bell Telephone Co*,

284 Mich App 581, 594-596; 773 NW2d 271 (2009), concluded that a handicap-accessible van was an allowable expense under Section 3107(1)(a). The Court of Appeals affirmed a decision denying the defendant's motion for summary disposition regarding a claim for the entire cost of a handicap-accessible van. *Id* at 595.

The Court of Appeals in *Begin* analyzed *Griffith* and concluded that the *Griffith* decision stands for the proposition that insurance companies are liable to pay the full cost of a handicap-accessible van. This was true even though the plaintiff in *Begin* drove a van before his accident. *Id* at 590. In reaching this conclusion, the Court of Appeals recognized that *Griffith* did not make a bright-line decision on compensability based on whether the person had some need for a similar product (such as food or shoes) before the auto accident injury. The Court of Appeals in *Begin*, thus, stated:

> **Moreover, we reject defendants' bright-line rule that if an injured person uses a product, service, or accommodation both before and after their motor vehicle accident, the person cannot for that reason meet the statutory causal relationship tests clarified in *Griffith* for an "allowable expense" no-fault benefit.** Rather, the *Griffith* Court held that a product, service, or accommodation an injured person uses both before and after a motor vehicle accident might be an "allowable expense" no-fault benefit depending on the particular facts and circumstances involved. . . .
>
> . . . .
>
> A further example cited by the *Griffith* Court illustrates the fact that our Supreme Court did not adopt the bright-line rule defendants urge. In explaining what "allowable expenses" might come within the term "care" as used in MCL 500.3107(1)(a), the Court used the hypothetical example of a person whose leg was injured or amputated in a motor vehicle accident. The Court opined that "the cost of such items as a prosthetic leg or *special shoes* would be recoverable under the term 'care,' even though the person will never recover or be rehabilitated from the injuries, because the cost associated with such products or accommodations stems from the injury."

> **Thus, in the Court's hypothetical example, the mere fact that the injured person almost certainly used shoes before the accident would not preclude a finding that "special shoes" would be necessary for the injured person's care and thus an "allowable expense" under MCL 500.3107(1)(a).**
>
> We also note that the *Griffith* Court, when discussing the cost of food provided to an injured person in an institutional setting, did not suggest that only the marginal increase in the cost of such food served in an institutional setting would be an allowable expense. Nor did the Court suggest that only the marginal cost of modifying regular shoes would be a recoverable "allowable expense" under MCL 500.3107(1)(a). Rather, in each example, the product, service, or accommodation used by the injured person before the accident is so blended with another product, service, or accommodation that the whole cost is an allowable expense if it satisfies the statutory criteria of being sufficiently related to injuries sustained in a motor vehicle accident and if it is a reasonable charge and reasonably necessary for the injured person's care, recovery, or rehabilitation under MCL 500.3107(1)(a). The latter inquiry, of course, is factual and dependent on the circumstances of each case.

Begin, supra at 594-597 (emphasis added).

Under these principles established in *Griffith and Begin*, the no-fault insurer is clearly liable to pay for the full cost of Kenneth Admire's handicap-accessible van under Sections 3105(1) and 3107(1)(a). This is because his post-accident transportation needs are different than his pre-accident transportation needs and there was no genuine issue of material fact as to whether those charges were reasonable in amount and were reasonably necessary for Kenneth Admire's care, recovery or rehabilitation. Saying that insurance companies only have to pay for the modifications to a van, is akin to saying that only the wheels on a wheelchair are compensable but not the chair itself. Accordingly, this Court should hold that insurance companies must reimburse catastrophically injured auto accident victims for the full cost of a handicap-accessible van once that injured person

demonstrates that such a van is reasonably necessary for his or her care, recovery or rehabilitation. To hold otherwise would disregard well-established precedent, and more importantly, the plain language of MCL 500.3107(1)(a).

CONCLUSION

The Court of Appeals in *Admire* correctly applied Michigan no-fault law for allowable expenses of handicap-accessible vans when it relied on *Davis v Citizens* and *Begin v Michigan Bell Telephone,* because both cases were correctly decided. Moreover, this Court's decision in *Griffith v State Farm* does not compel a contrary result, because this Court's decision in *Griffith* is consistent with well-established principles of causation applicable to No-Fault PIP claims, which require no-fault insurers to pay for handicap-accessible vans, and not modifications only, so long as there is a causal connection between the claimant's injuries and the need for handicap-accessible transportation such as a van. Adopting the insurance industry's argument would result in hundreds of paralyzed, wheelchair-bound people not being able to have transportation to get to and from their reasonably necessary medical care and, recovery, and rehabilitation.

RELIEF REQUESTED

Amicus Curiae CPAN respectfully requests that this Honorable Court deny Auto-Owners' Application for Leave to Appeal and affirm the Court of Appeals' decision because the No-Fault Act, MCL 500.3107(1)(a), obligates Auto-Owners to reimburse Kenneth Admire for the full cost of having purchased a replacement handicap-accessible van, and not simply the cost of modifications.

Respectfully submitted,

Date: February 21, 2012

By: _____

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